BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against **Audrey Chiharu Toda, M.D.** **Physician's and Surgeons** **License No. A 105188** **Respondent.**	**Case No. 800-2016-028804**

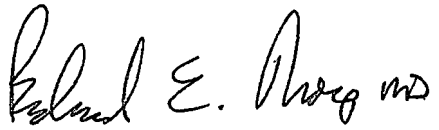
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 19, 2021.

IT IS SO ORDERED: February 17, 2021.

MEDICAL BOARD OF CALIFORNIA



Richard E. Thorp, M.D., Chair
Panel B

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **AUDREY CHIHARU TODA, M.D.** 3555 Whipple Rd. Union City, CA 94587-1507 Physician's and Surgeon's Certificate No. A 105188 Respondent.	Case No. 800-2016-028804 OAH No. 2020070021 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California (Board). He brought this action solely in his official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by David Carr, Deputy Attorney General.

2. Respondent Audrey Chiharu Toda, M.D., is represented in this proceeding by attorney Ann H. Larson, of Craddick, Candland & Conti, APC, whose address is 2420 Camino Ramon, Suite 202, San Ramon, CA 94583-4202.

3. On or about August 6, 2008, the Board issued Physician's and Surgeon's Certificate No. A 105188 to Audrey Chiharu Toda, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2016-028804, and will expire on January 31, 2022, unless renewed.

JURISDICTION

4. Accusation No. 800-2016-028804 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 19, 2018. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2016-028804 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2016-028804. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2016-028804, if proven at a hearing, constitute cause for imposing discipline upon her Physician's and Surgeon's Certificate.

10. Respondent does not contest that, at an administrative hearing, complainant could establish a prima facie case with respect to the allegations of Accusation No. 800-2016-028804 and that she has thereby subjected her Physician's and Surgeon's Certificate to disciplinary action.

11. Respondent agrees that her Physician's and Surgeon's Certificate is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

12. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Medical Board of California or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the

Board, all of the charges and allegations contained in Accusation No. 800-2016-028804 shall be deemed true, correct and fully admitted by respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

15. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

16. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 105188 issued to Respondent AUDREY CHIHARU TODA, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless

the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations. Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period without having been granted an extension of time by the Board, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on

the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

3. MONITORING – PRACTICE. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which

includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of medicine and whether Respondent is practicing medicine safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) Respondent merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that location.

If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, the Respondent's practice setting changes and the Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent shall notify the Board or its designee within five (5) calendar days of the practice setting change. If Respondent fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume practice until an appropriate practice setting is established.

STANDARD CONDITIONS:

5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, ,Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and

Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation

or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Ann H. Larson. I understand the stipulation and the effect it will

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have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 10/15/2020

AUDREY CHIHARU TODA, M.D.
Respondent

I have read and fully discussed with Respondent Audrey Chiharu Toda, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 10/15/20

ANN H. LARSON
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby submitted for consideration by the Medical Board of California.

DATED: October 16, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MARY CAIN-SIMON
Supervising Deputy Attorney General

DAVID CARR
Deputy Attorney General
Attorneys for Complainant

EXHIBIT A

XAVIER BECERRA
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Supervising Deputy Attorney General
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO July 19 2018
BY: Judy Wright ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **AUDREY CHIHARU TODA, M.D.** 3555 Whipple Rd. Union City, CA 94587-1507 Physician's and Surgeon's Certificate No. A 105188, Respondent.	Case No. 800-2016-028804 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On August 8, 2008, the Board issued Physician's and Surgeon's Certificate Number A 105188 to Audrey Chiharu Toda, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

5. Section 2234 of the Code states, in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts. . . . .

"(d) Incompetence

". . . ."

6. Section 2266 of the Code states that "[t]he failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

7. The incidents alleged herein occurred in California.

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FIRST CAUSE FOR DISCIPLINE

(Negligence)

8. Respondent has subjected her license to disciplinary action under section 2234(b) and/or 2234(c) for unprofessional conduct, in that her care and treatment of patient P-1[1] included departures from the standard of care constituting gross negligence and/or, in conjunction with the other departures alleged herein, repeated negligent acts. The circumstances are as follows:

9. On November 22, 2013, 31-year old patient P-1 presented to the hospital to give birth. The hospital medical records indicate that P-1 was completely dilated and at 0 station by 7:48 p.m. Fetal heart rate was deemed category II because of repeated variable decelerations throughout the period of labor. When P-1 became fully dilated, the pattern of decelerations—noted as being as low as 60 beats per minute-- became exacerbated. Respondent assumed the responsibilities of P-1's attending obstetrician at about 8:00 p.m. The record states that at 8:00 p.m. the fetal heart rate was down for 2 minutes and at 9:36 p.m. there was a deep deceleration of the fetal heart rate, with a slow return to baseline. There are no contemporaneous physician notations reflecting treatment to address the fetal distress indicated by these fetal heart rate readings.

10. When P-1 began pushing at 9:15 p.m., the presence of meconium was noted. The vertex descended to +1 station and remained there. Respondent's progress note states that the head was too high for an operative vaginal delivery. A consent form for a caesarian section (C-section) was signed at 10:03 p.m. At 11:17 p.m., after P-1 had been pushing for two hours but the fetal vertex had failed to descend any farther, Respondent ordered a C-section. Contemporaneous chart entries note that P-1 had a temperature of 100.8 degrees and an increasing white blood cell count. Respondent did not promptly initiate aggressive antibiotic therapy. Forty minutes after Respondent decided to perform the C-section, a spinal anesthetic was administered and four minutes after that Respondent made the initial incision. A baby with assessed initial Apgar scores

[1] The patient is identified herein as Patient One to protect her family's privacy. The patient's name will be provided to Respondent in discovery.

of 7/9 was delivered ten minutes later—almost an hour after Respondent made the decision to perform a C-section.

11. There was an extension of the left lateral uterine incision which was repaired and a quantitative blood loss of 1450 ml. At 12:45 a.m., P-1's intake and output began to be measured, but there is no documentation of the order to begin the measurement. Surgery was completed at 12:50 a.m. Anesthesiology notes reflected that P-1 passed a small amount of blood-tinged urine. Respondent did not address this and did not mention it in her notes. Respondent's notes are, in the main, an after-the-fact commentary or review of what was done. They do not include objective information such as laboratory results, ongoing assessments of P-1's condition and the factors contributing to it, or a plan to address the crucial medical issues then emerging.

12. Immediately after the surgery, 700 ml of blood and clots were expressed from the uterus for a total blood loss at that time of 2150 ml. Uterotonics were administered ten and twenty minutes post-operatively. There is no documentation that Pitocin was given post-operatively. The nurse anesthetist placed a second IV. Although P-1 was hypotensive and tachycardic and had no urine output immediately post-op, Respondent did not initiate or document any critical care measures. At 1:20 a.m., an additional 980 ml of bright red blood was noted, making total blood loss 3130 ml. Respondent did not document a differential diagnosis for P-1's hemorrhage or a treatment plan, did not order the initiation of a massive transfusion protocol, and did not delegate fluid management to an appropriate physician specialist such as a hospitalist or a hematologist. Respondent did not consult with an intensivist to monitor and treat acute metabolic emergency conditions, including fluid imbalances. Respondent called for a second obstetrician and, approximately an hour after the surgery, performed a vaginal examination to check for lacerations. At 2:06 a.m., in an attempt to staunch the blood loss, a Bakri balloon was placed with the help of the second obstetrician. Three lap pads were used to pack the vagina. Although P-1 subsequently bled through the packing, there is no documentation that Respondent ruled out coagulopathy, nor any notes to suggest Respondent considered surgical intervention. A central venous line, which would have facilitated rapid blood transfusion, was not placed.

13. Although there is no formal order either to initiate the massive transfusion protocol (MTP) or to transfuse P-1 documented in the medical record, the nurse anesthetist's hand-written notes in obstetric anesthesia record state that the MTP was begun at 2:11 a.m. MTPs include immediate infusion with fixed ratios of packed red blood cells (PRBCs), fresh plasma, platelets, and cryoprecipitate. There is no indication in the medical record that P-1 received fresh plasma, platelets, or cryoprecipitate. When asked later about decisions concerning blood and fluid replacement for P-1, Respondent stated to Board investigators that she was relying on the anesthesia team to dictate blood and fluid replacement.

14. P-1's quantitative blood loss (QBL) at 2:39 a.m. was recorded as 4455 ml. The nurse anesthetist documented calling in another nurse anesthetist and a senior anesthesiologist after the MTP was initiated. By then, P-1 was hypotensive and tachycardic. A total of 8 units of PRBCs were transfused along with 5 liters of crystalloids (a hydration solution). Although urine output was negligible, anuria was not addressed. Critical blood gas results and electrolyte imbalance demonstrated by progressively abnormal lab results were not noted. Other than noting hemoglobin results and a normal PTT/INR reading, Respondent failed to document or interpret any of P-1's laboratory results.

15. P-1's bleeding continued and by 3:40 a.m. the QBL exceeded 4590 ml. P-1's vital signs did not improve after the transfusions. Despite the massive blood loss, multiple transfusions, and resulting metabolic acidosis and potential coagulopathy, Respondent did not request a consultation with a medical intensivist or hematologist. Respondent did not order an ultrasound. There were no documented interventions to treat the metabolic acidosis reflected in the laboratory results.

16. At 4:00 a.m. P-1's fibrinogen levels fell to 180 and she was intubated. A code blue was called at 4:24 a.m.; P-1 died at 5:05 a.m.

17. Respondent has subjected her license to disciplinary action for unprofessional conduct in that her failure to take appropriate critical care measures when P-1 was hypotensive, anemic, tachycardic, and had no measurable urine output immediately post-operatively was a departure from the standard of care constituting gross negligence in violation of section 2234(b)

and/or, in conjunction with the other departures alleged herein, repeated negligent acts in violation of section 2234(c).

SECOND CAUSE FOR DISCIPLINE

(Negligence)

18. The allegations of paragraphs 9 through 16 above are incorporated by reference as if set out in full. Respondent's license is subject to disciplinary action in that her failure to diagnose and treat P-1's postpartum hemorrhage was a departure from the standard of care constituting gross negligence in violation of section 2234(b) and/or, in conjunction with the other departures alleged herein, repeated negligent acts in violation of section 2234(c).

THIRD CAUSE FOR DISCIPLINE

(Negligence)

19. The allegations of paragraphs 9 through 16 above are incorporated by reference as if set out in full. Respondent's license is subject to disciplinary action in that her failure to initiate and effectively administer the massive transfusion protocol or to designate an appropriate physician to initiate and oversee the massive transfusion protocol was a departure from the standard of care constituting gross negligence in violation of section 2234(b) and/or, in conjunction with the other departures alleged herein, repeated negligent acts in violation of section 2234(c).

FOURTH CAUSE FOR DISCIPLINE

(Negligence)

20. The allegations of paragraphs 9 through 16 above are incorporated by reference as if set out in full. Respondent's license is subject to disciplinary action in that her failure to recognize the need for consultation with appropriate specialists such as a gynecologic oncologist, general surgeon, hematologist, or hospital-based intensivist under the circumstances of P-1's devolving condition was a departure from the standard of care constituting gross negligence in violation of section 2234(b) and/or, in conjunction with the other departures alleged herein, repeated negligent acts in violation of section 2234(c).

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FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate Medical Records)

21. The allegations of paragraphs 9 through 16 above are incorporated by reference as if set out in full. Respondent's license is subject to disciplinary action in that her failure to maintain adequate and accurate records relating to her medical care and treatment of P-1 constitutes unprofessional conduct by application of section 2266.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 105188, issued to Audrey Chiharu Toda, M.D.;

2. Revoking, suspending or denying approval of Audrey Chiharu Toda, M.D.'s authority to supervise physician assistants and advanced practice nurses;

3. Ordering Audrey Chiharu Toda, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: July 19, 2018

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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